

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,

Plaintiff,

v.

CHRISTIAN BARRAZA-MACIEL,

Defendant.

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8:05CR398

MEMORANDUM AND ORDER

This matter is before the court on the defendant's objection (Filing No. 50) to the report and recommendation (hereinafter, "R&R") of the United States Magistrate Judge ("magistrate") (Filing No. 49) recommending that the defendant's motion to suppress (Filing No. 26) be denied.

Under 28 U.S.C. § 636(b)(1)(C), the court makes a *de novo* determination of those portions of the report and recommendation to which the parties object. *United States v. Lothridge*, 324 F. 3d 599, 600-01 (8th Cir. 2003). The court has conducted a *de novo* review of the record pursuant to 28 U.S.C. § 636(b)(1)(A), including the transcript of the hearing on the motion ("Hr'g Tr.") (Filing No. 44). In his motion to suppress, Barraza-Maciel asserts that evidence seized from him and statements he made at the time of his arrest on September 29, 2005, should be suppressed. Specifically, he asserts that his arrest was illegal, and that evidence seized subsequently is inadmissible as "fruit of the poisonous tree" under *Wong Sun v. United States*, 371 U.S. 471 (1963).

BACKGROUND

The facts are adequately set forth in the R&R and need not be fully repeated here. The court agrees with the magistrate's recitation of the evidence presented at the hearing. Briefly, defendant was arrested in Iowa by Iowa law enforcement officers, with the

assistance of members of the Omaha Police Department and the Sarpy County Sheriff's Office, after he had been observed by law enforcement officers delivering methamphetamine to an informant who was cooperating with Omaha Police Sergeant Greg Gonzales in a drug-trafficking investigation. Hr'g Tr. at 9-11. Sergeant Gonzalez had followed defendant's vehicle from Nebraska into Iowa. *Id.* at 12. It appeared to Sergeant Gonzalez that another drug transaction was about to occur in Iowa. *Id.* Council Bluffs Police Officer Beau Wake effectuated the arrest at Sergeant Gonzalez's request. *Id.* at 29-29. Defendant was arrested in Iowa for being a fugitive from justice in another jurisdiction. *Id.* at 31.

After a hearing, the magistrate found that the arrest was supported by probable cause. Filing No. 49, R&R at 6-7. The court finds that the evidence shows that, based on their collective knowledge and treating the arrest as if it had been made by federal officers, the law enforcement officers had knowledge of facts and circumstances based on reasonably trustworthy information that was sufficient to warrant a belief that an offense had been or was being committed by the defendant. The court agrees with the magistrate's well-reasoned legal analysis and conclusions and finds that the R&R should be adopted.

IT IS ORDERED:

1. The report and recommendation of the magistrate (Filing No. 49) is adopted;
and
2. Defendant's motion to suppress evidence (Filing No. 26) is denied.

DATED this 24th day of May, 2006.

BY THE COURT:

s/ Joseph F. Bataillon
United States District Judge